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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,195	04/18/2002	William L. Kopko	2709-104	8600

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EXAMINER

FREAY, CHARLES GRANT

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,195

Applicant(s)

KOPKO, WILLIAM L.

Examiner

Charles G Freay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 77-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 77-80 is/are rejected.
- 7) ☒ Claim(s) 81 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to the amendment of October 12, 2004. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 77 and 79 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Munk.

Claims 77 and 79 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the Foster-Pegg Article.

Claims 77-80 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bronicki et al.

Allowable Subject Matter

Claim 81 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed October 12, 2004 have been fully considered but they are not persuasive.

The applicant argues against the Munk reference because Munk does not disclose a supercharging system which increases the pressure of the gas in the input airstream. The applicant argues that the blower of Munk merely provides a forced draft of air. The applicant also notes a declaration filed under 37 CFR 1.132 by the applicant on May 7, 2003. In that declaration the applicant argued that Munk's blower is not a supercharger because it does not increase the pressure of the input airstream. The applicant argues that the purposes of the blower is to overcome pressure drops from the heater and the fogging system.

The examiner disagrees with the applicant's analysis of the Munk reference. Munk states that the blower produces a "*forced draft* of air". Forcing air clearly requires an increase in pressure and thus the blower clearly is providing supercharging to the air being provided to the compressor.

The Declaration under 37 CFR 1.132 filed May 7, 2003 is insufficient to overcome the rejection of claims based upon Munk under 35 USC 102(b) as set forth in the last Office action because: The declaration merely provides the opinion of the inventor (who clearly the has an interest in this application). It is Mr. Kopko's opinion that the blower is merely used to overcome the heater effects and the cooler. However, It is noted that the heaters in Munk are optional elements (note col. 4 line 7). Further even if the purpose of the blower is to overcome the cooler and the optional heater the

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blower is still "supercharging" the input airflow relative to what would be achieved if the compressor directly sucked the air from ambient through the cooler and any optional heating equipment without the blower present. The declaration provides no factual evidence or data relating to the operational states (pressure, temperature, etc.) of the Munk device.

The applicant argues against the Foster-Pegg reference because Foster-Pegg does not describe a supercharging system and at least one fogger located upstream of the gas turbine input air stream, "wherein the gas turbine is operated to provide maximum generator design rated output at summer-peaking temperatures". The applicant argues that "Foster-Pegg fails to teach such operation". The applicant admits that the cooler of Foster-Pegg would increase the power output and states that Foster-Pegg would not "change the shape of the curve as shown in Fig. 6 for example". The applicant seems to be arguing that the supercharger of Foster-Pegg will not produce the same results as the applicant's supercharger.

The examiner disagrees with the applicant's arguments. The supercharger and cooling structure set forth in Foster-Pegg are arranged in the same manner as set forth in the applicant's invention. On page 2 the last paragraph of the first column Foster-Pegg notes that when the pressure ratio across the gas turbine is raised (i.e. the intake pressure raised) there is a power increase. Foster-Pegg goes on to say that "(t)o take advantage of this effect, the intake pressure of a gas turbine may be increased by use of a forced draft fan" (The examiner notes the use of language similar to that describing

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the blower of Munk used here in Foster-Pegg to describe the supercharging effect of the fans). With regards to the arguments relating to the shape of the operational curves achieved by the applicants structure it is noted that the features upon which applicant relies (i.e., the shape of the curves) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant argues against the Bronicki et al reference because "Bronicki explains that the heat exchanger 222 produces cooled ambient air, the precompressor device 223 compresses the cooled ambient air to produce pressurized air that is warmer than the ambient air, and the evaporative cooler cools that pressurized air to produce cooled ambient air at ambient temperature and relative humidity." The applicant then notes that claim 77 sets forth that the fogger humidifies and cools the input air stream and from this concludes that Bronicki does not humidify and cool the input air stream.

The examiner disagrees. In the applicants own arguments he notes that the Bronicki et al coolers humidify and cool the air stream twice as the air travels to the compressor. The applicant seems to be arguing that the air is not cooled relative to ambient. The claim does not include this limitation however and, as noted by the applicant in the above arguments, Bronicki et al teaches both a supercharger and cooling elements in the input air stream.

The terminal disclaimer filed October 12, 2004 has overcome the double patenting rejections set forth in the last office action.

The applicant also argues that by the examiner stating that the functional and operational claim limitations have not structurally defined over the prior art the examiner has simply ignored these limitations. The applicant argues that the examiner cannot simply ignore the functional language because it does not merely state the inherent result of other claim limitations.

Respectfully, a careful reading of the examiner's remarks at page 5 of the last office action makes it clear that the functional statements and the statements of intended use were not ignored by the examiner. Once again, as previously noted by the examiner, a recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art - *if the prior art has the capability to so perform*. See ex parte Mashum, 2 USPQ2d 1647 (1987). Since the prior art references each disclose a supercharger for increasing the pressure of the airstream of the gas turbine and a fogging cooler which humidifies and cools the air stream going to the cooler then each of the references clearly disclose structure used in the manner and for the same purposes intended by the applicant. Clearly the superchargers and foggers of the prior art devices have the capability to perform as set forth in the applicants intended use and functional statements. Therefore, these limitations have not structurally defined the claims over the prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

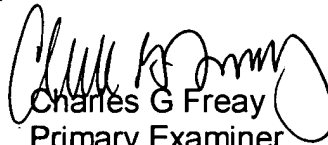
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles G Freay
Primary Examiner
Art Unit 3746

CGF
March 25, 2005